In the High Court of Punjab and Haryana at Chandigarh

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L.P.A. No.1040 of 1999

.....

Date of decision:6.9.2006

The Secretary to Govt. Punjab, Higher Education and Language Department, Punjab and others

.....Appellants

v.

Smt. Harbhajan Kaur L.R. of Shri Ajit Singh Kakkar

.....Respondent

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mrs. Charu Tuli, Senior Deputy Advocate General, Punjab for the appellants.

Mr. Sandeep Chopra, Advocate for the respondent.

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S.S. Saron, J.

The claim for medical reimbursement of the respondent, who has retired as Director of Languages, Punjab, having been allowed by the learned Single Judge, the State of Punjab has filed this Letters Patent Appeal assailing the said order.

On medical check-up of the respondent which was undergone by him in 1994 it was diagnosed that both his kidneys had failed. He remained under treatment upto 1997 and thereafter he was advised to undergo dialysis. The respondent remained on dialysis from May 1997 and was under treatment at the Patiala Dialysis and Kidney Centre and Kidney Hospital, Patiala. He submitted an application for ex-post facto sanction of the

expenses incurred on his treatment. The District Medical Board in its meeting held on 4.2.1998 granted the necessary sanction at government rates. The respondent also underwent other medical treatment for which he incurred expenses. The medical expenses payable to the respondent were declined in view of the government instructions dated 31.12.1997 which provide that there was to be no reimbursement of medical expenses incurred by an employee for treatment as an outdoor patient w.e.f. 1.1.1998. However, it was also made clear that the facility of medical reimbursement of expenses incurred as an indoor patient would continue. Medical allowance @ Rs.250/- per month was given to the respondent. The learned Single Judge relying on the judgments of this Court in Ravi Kant v. State of Haryana, 1998 (3) RSJ 705, Jagsir Singh Sandhu v. P.S.E.B., Patiala, Civil Writ Petition No.15938 of 1998, decided on 1.2.1999 and Renu Saigal v. State of Haryana, 1998 (4) RSJ 557 allowed the claim of the respondent. It was observed by the learned Single Judge that it is conceded position that renal failure is a chronic disease. Besides, had the respondent undergone dialysis as an indoor or outdoor patient in any Government Hospital he would have been entitled for some, if not full, reimbursement for the medical expenses incurred as held in Ravi Kant's case and Renu Saigal's case (supra).

Mrs. Charu Tuli, learned Senior Deputy Advocate General, Punjab appearing for the State has contended that the instructions dated 31.12.1997, which provide that no reimbursement of medical expenses shall be given as an outdoor patient w.e.f. 1.1.1998 are based on the recommendations of the Fourth Pay Commission set-up by the Punjab Government. In terms of the recommendations of the Pay Commission all

eligible employees/pensioners of the State Government have been allowed Rs.250/- per month as fixed medical allowance. Therefore, it is contended that the policy framed by the State is legal and justified which warrants no interference by this Court in exercise of its jurisdiction under Articles 226/227 of the Constitution of India.

In response, Mr. Sandeep Chopra, Advocate appearing for the respondent contends that the learned Single Judge has rightly allowed the claim for medical reimbursement of the respondent. It is contended that there can be no difference between persons undergoing treatment as indoor patients and those receiving the same treatment as outdoor patients.

We have given our thoughtful consideration to the contentions of the learned counsel appearing for the parties. The question whether the Government could restrict reimbursement of medical expenses incurred by eligible employees/pensioners to those who have undergone treatment as indoor patients and denying it to those who have undergone treatment as outdoor patients is not res integra. This Court in Ravi Kant's and Renu Saigal's cases (supra) held that the instructions insofar as they deny the reimbursement of medical expenses incurred to an outdoor patient are void. Accordingly, directions were issued to the respondents therein to make full reimbursement of the medical expenses incurred by the respective petitioners in the said cases both as indoor and outdoor patient. In Ravi Kant's case (supra) it was held that if outdoor medical treatment is absolutely necessary the employee or pensioner who is the patient would be entitled to full reimbursement. The learned Single Judge in his order under appeal has observed as follows:-

> "In the light of the fact that kidney failure is an irreversible process and the disease itself is a chronic one, it would not be necessary for the patient to be admitted in the hospital for undergoing the process. To my mind, the process of dialysis is merely a follow up to the treatment that the petitioner had received in the various Institutions that (he) had attended. It is also the conceded position that regular dialysis was the only procedure that could ensure the petitioner survival. It also appears that the facility for regular dialysis is not readily available in any Govt. Hospital in the State of Punjab and even the P.G.I., Chandigarh has seven machines which can take care of only eight patients a day and it is because of lack of facilities that the petitioner had been granted sanction to take dialysis from the Patiala Dialysis and Kidney Centre and Kidney Hospital Patiala a private Hospital. The petitioner who is present in Court has pointed out that he is even now undergoing dialysis under the CAPD process from the Dayanand Medical College and Hospital Ludhiana. To my mind this would not make any difference as to the rate of reimbursement as the petitioner is entitled to and is in fact claiming reimbursement at Govt. Rates and no more."

The above observations clearly show that the claim of the respondent for reimbursement of medical expenses incurred by him is justified. Besides, the pronouncements of law by this Court as noticed above have held that an eligible employee/pensioner would be entitled to reimbursement of the

medical expenses incurred as an outdoor patient. This position has been reiterated by a Division Bench of this Court in C.B. Gupta v. State of Haryana, (2003-1) PLR 343 to which one of us (S.S. Nijjar, J.) was a party. Besides, it may also be noticed that Civil Appeal No.4302 of 1999 titled Punjab State Electricity Board v. Jagsir S. Sandhu has been dismissed by the Supreme Court on 27.11.2001. Besides, Civil Appeal No.2463-2464 of 1999 titled M.D., Sirsa Central Cooperative Bank Ltd. and another v. Ravi Kant and others was dismissed as withdrawn by the Supreme Court on 12.2.2001. In the circumstances, the action of the appellants making a distinction between those getting medical treatment as indoor patient and those getting as outdoor patient for the purposes of medical reimbursement is clearly unsustainable and has no rational basis of any object to be achieved. This is moreso for the reason that it is conceded position by the appellants itself that had the respondent undergone the dialysis as an indoor patient in any government hospital he would have been entitled to some, if not full, medical reimbursement for the expenses incurred.

In the circumstances, there is no merit in this appeal and the same is accordingly dismissed.

(S.S. Nijjar)
Judge

September 6, 2006.

(S.S. Saron)
Judge

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